

Connie Kwan  
Pro se creditor

To:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Connie Kwan hereby respectfully submits this motion for entry of an order to rule that (1) ownership of ALL the coins she deposited into the Celsius Earn platform belong to her and not the Debtors, (2) that the coins are due to her in kind as BTC, MATIC, OMG and not in another form, and (3) that the 'Earn' account receives equal standing (seniority/preference) in bankruptcy proceedings with 'Custody' Accounts.

I respectfully state as follows:

1. I have been an account holder at Celsius Network since April 30, 2020. My assets, as of Celsius Network's Bankruptcy filing, were in an 'Earn' account. I serve this motion and request a hearing to ensure that my deposits are deemed my property and that my 'Earn' account receives equal standing (seniority/preference) in bankruptcy proceedings with 'Custody' Accounts. My account holdings are presented in Exhibit A.
2. Digital assets in Earn accounts are customer assets. The deposit of digital assets into Celsius' network for earning rewards does not convert these assets into Celsius' assets. Celsius did not treat my deposits of digital assets as a disposal of property or a transfer of title. Instead, I paid taxes on the deposited assets to the IRS based on the 1099 forms generated **by Celsius**. This tax treatment demonstrated that I retained ownership of the assets and that I was in constructive receipt of interest paid as it was deposited into my account by Celsius.
  - a. At my account opening, there were no separate 'Earn' or 'Custody' wallets but only personal Celsius wallets.
  - b. The returns (rewards) on my deposited assets (BTC and ETH) were not exorbitant but rather in the range of 3-6%. Celsius' 'Terms of Use' and web AMAs

(Ask Me Anything with CEO) indicated that customer assets can be lent out to carefully vetted over-collateralized institutional borrowers. Based on my understanding, this is similar to Etrade or Fidelity loaning customer shares to institutions (e.g. short selling) and in the process returning interest on your shares. *(Please refer to Celsius' email in Exhibit A denoting BTC and ETH returns of 4.03% and 3.8% respectively for a sample week).*

- c. I paid taxes for the rewards earned on the digital assets deposited at Celsius to IRS for tax years 2020-2021. Celsius itself generated 1099 forms for income earned. My Earn assets should not be now treated as Celsius' (estate) assets for settlement and/or distribution while Custody or other accounts are treated as their own assets and given better treatment in these bankruptcy proceedings. *(Please refer to Exhibit A for the screenshot of Celsius 2020 and 2021 Tax 1099 form.)*
3. To the extent any 'Terms of Use' were updated and modified, these changes were made in an inconspicuous manner. Any such clauses (or change to clauses) with material impact on customers with respect to, for example, use of the assets, or the transfer of ownership to Celsius', or limitations on exercising certain ownership rights were obfuscated and were never expressly or conspicuously disclosed.
  - a. At account opening and initial transfer of our personal digital assets to Celsius Network, 'Terms of Use Version 1' was applicable. The entire 'Terms of Use Version 1' does not have any mention of transfer of ownership rights to Celsius. In fact, Section 14 is entitled, "Consent to Celsius's Use of **Your** Digital Assets." (emphasis added).
  - b. Also, the 'Terms of Use Version 1 paragraph 31' expressly stated that the notice of changes to the 'Terms of Use' would be provided with the specific additions, deletions or subtractions to the 'Terms of Use'. Celsius did not send me any email for 'Change in Terms'. Even if it had done so, it would have been imperative to communicate expressly and unambiguously any material changes and to ask the customer to explicitly accept the changed 'Terms of Use'.
4. I believe I was misled on Celsius' regulatory compliance and at the time of creation of Custody accounts (April 2022), I was grandfathered into continuing with an Earn account without any option to transfer assets into a Custody account, thus giving Custody account holders an advantage to my detriment. Celsius' email (April 12, 2022) regarding the upcoming changes to my account failed to mention that I would have less favorable rights than Custody but instead merely advised I did not need to transfer my assets to the new Custody account. The emails also do not mention the 'Cease and Desist' orders from certain jurisdictions leading to the Custody account creation. The emails did not convey the differences between Earn and Custody accounts or that Earn Accounts have

higher risks than Custody accounts or could have lower priority in a bankruptcy proceeding.

- a. On April 12, 2022, I received an email from Celsius regarding upcoming changes to Celsius 'Terms of Use'
- b. Celsius' email indicates that the changes are being made in consultation with United States regulators concerning Earn accounts/product.
- c. Celsius' email had a section explaining the impact of the changes under the heading "**how these changes impact you**". But the details within the section obfuscate the most material impacts to my Celsius account. There is no mention of any possible impairment of my ownership rights or risks associated with "New Earn Accounts" or how these "New Earn Accounts" would differ from newly-created Custody accounts.
- d. Celsius' email also states that my "All coins transferred to Celsius by users in the United States prior to April 15, 2022 will continue to earn rewards. Those existing coins will continue to earn rewards from April 15th and onward, for as long as they remain in their Earn accounts" but fail to mention the added risk of Earn accounts compared to Custody accounts.
  - i. The Court now knows that thousands of other Earn accounts similar to mine, but held by residents of other states/jurisdictions, were transferred into Custody. As per Celsius, my account remained in Earn solely per regulatory requirements of my state. It is unconscionable that I may have been burdened with additional risks to the other Earn account holders whose assets were transferred into Custody.
  - ii. If there was no explicit approval from California (tax state on my account) regarding Earn or Custody products, I should have been permitted to withdraw my funds and the account should have moved to "withhold" status in the interim.
  - iii. It is particularly significant that many of the other accounts transferred from Earn to Custody were internal Celsius accounts (held by employees, executives, investors, etc.) or people with advance inside knowledge of the financial difficulties at Celsius who wrongfully received and apparently may now be enjoying preferential treatment.

- e. The Custody FAQ on Celsius' website also described Custody solution as similar to a typical Earn account/product. *Please refer to the Custody FAQ in the Exhibit B.*
  - f. These Celsius emails and 'Terms of Use' clearly indicate that as an account holder, my account was transferred to Earn without any other option provided to us. The emails also fail to disclose any additional risks for Earn accounts over Custody accounts. Also as an Earn account holder for years, I did not undertake any additional risks to the other accountholders whose account were transferred into Custody automatically by Celsius. Finally, as a non-accredited depositor, I should have been made aware of 'Cease and Desist' orders and offered a Custody or Withdrawal option.
  - g. *Please refer to Celsius' emails in Exhibit B supporting the above statements.*
5. Argument against 'Terms of Use' implying assets deposited to Celsius Earn program by customers are Celsius' assets. Celsius inconspicuously inserted clauses in various 'Terms of Use' versions that claim the deposit of assets into Celsius grants Celsius the ownership. Yet there are also contradictory clauses in the Terms of Use (all versions) regarding ownership and withdrawals. Any ambiguity should be construed against Celsius as the drafter.
- a. Celsius' Terms of Use clearly state that customers can withdraw their digital assets at any time. If these were Celsius' assets, these will not be accessible for us to withdraw.
  - b. The ability to be able to withdraw our assets and also having paid taxes on the deposited  
  
digital assets (based on Celsius generated 1099 forms) clearly demonstrate that the assets were indeed my property. And that I possessed ownership rights and access to these digital assets at all times.
  - c. Please refer to the specific paragraph 12 from 'Terms of Use Version 5' pertaining to withdrawals:

**"12. Withdrawals**

***You may make a complete or partial withdrawal of Eligible Digital Assets from your Celsius Wallet at any time. Celsius initiates the withdrawal process immediately following a withdrawal request when possible; however, we may require up to three (3) days after you submit your withdrawal request to process the withdrawal."***

- d. Please refer to the specific paragraph 11 from 'Terms of Use Version Apr 14th 2022' pertaining to withdrawals:

**11. Withdrawals**

*Subject to these Terms, for **any of your Eligible Digital Assets** that you elect to utilize in the Earn Service (if available to you), **you have a call option on all loans made to Celsius to demand immediate, complete or partial repayment of any loan at any time** through (i) transfer to a Custody Wallet, if available to you, or (ii) **a complete or partial withdrawal of Eligible Digital Assets from your Celsius Account balance at any time**. Such repayment will terminate in whole or in part your loan to Celsius and you shall no longer accrue Rewards on the amount of loans as of the time of your exercise of the call option. Celsius initiates the withdrawal process immediately following a withdrawal request when possible; however, we may require up to three (3) days after you submit your withdrawal request to process the withdrawal.*

**Reservation of Rights**

I, as Movant/Declarant, fully reserve all of my rights and claims to fully supplement this Motion. I hereby assert a lack of due process in determining my property rights in this bankruptcy proceeding. I further maintain that the issue of whether my Earn Account assets constitutes property of these estates is not properly before this Court at this time.

I do not permit any of my coins to be sold to fund the debtors operations.

I ask to be excluded from the forced participation in a re-organization by a company that has lied, deceived and cheated its customers. No reasonably intelligent person would trust Celsius ever again after the discovery they attempted to steal customer assets. There is no future for Celsius, so let's stop the burn of remaining customer funds.

I reserve the right to ask for a share of equity in any illiquid assets that customer funds have been used to purchase, a share in any future insider clawbacks and a share in the return of loaned or staked assets to fill any shortfall in my original deposit.

Connie Kwan

*Pro Se Celsius Creditor*



## Exhibit A

1. Current account holdings, photo from snail mail document from Stretto.

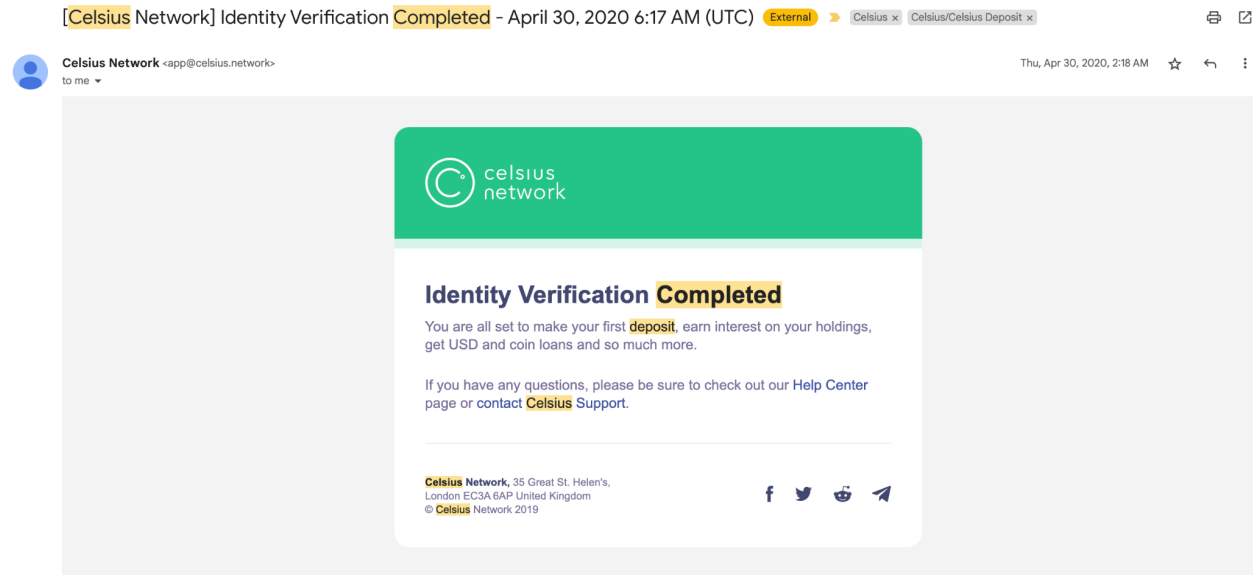
CONNIE KWAN  
[REDACTED]  
[REDACTED] REDWOOD CITY, CA [REDACTED]

Celsius Account Email: [REDACTED]@maestro.com

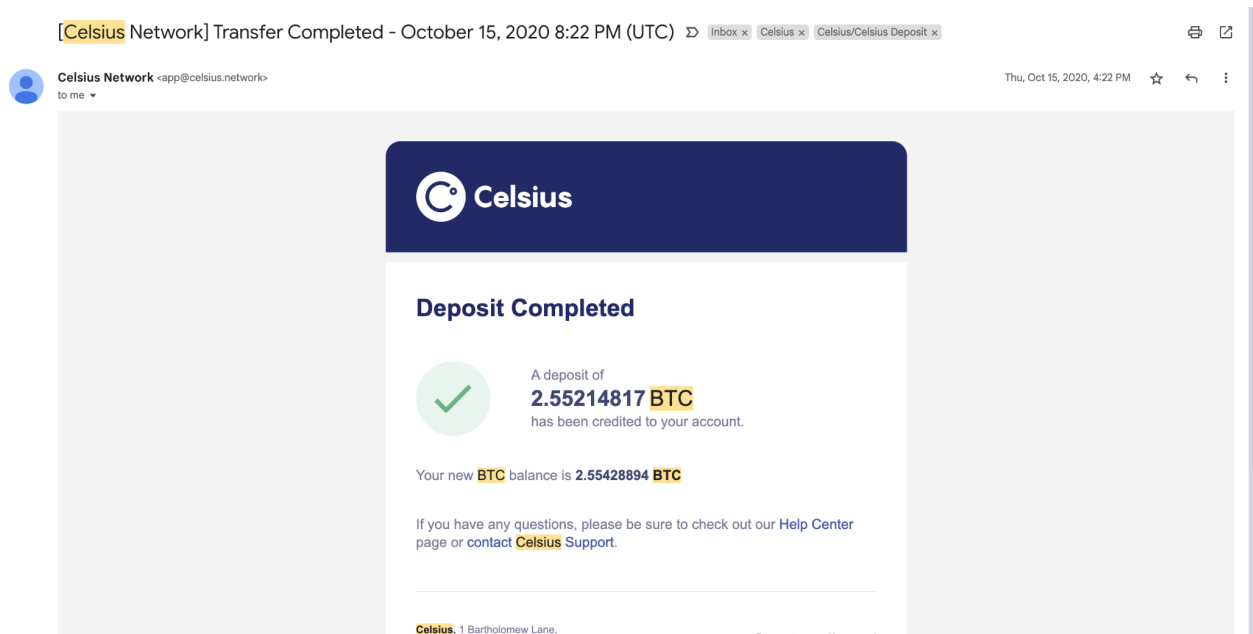
Celsius Network LLC has listed your claim on Schedule EF Part 2 as a **General Unsecured** claim comprising of the coin(s) listed in the table below. If you agree with the characterization, amount of your claim, and your claim is not listed as Contingent, Unliquidated, Disputed, you do not need to submit a claim form.

SCHEDULE F LINE			
INDICATE IF CLAIM IS CONTINGENT, UNLIQUIDATED, DISPUTED	3.1.114430		
IS THE CLAIM SUBJECT TO OFFSET? (YES/NO)			
EARN ACCOUNT	CUSTODY ACCOUNT	WITHHELD ACCOUNT	COLLATERAL ON LOAN RECEIVABLE
BTC 2.75645895299381 CEL 1.1161592885297 MATIC 74331.1138146938 OMG 4.03452947793026			

2. Celsius Account Verification complete email,



3. Deposit completed email (one of several)



4. Rate of return email



on the block! Get more bang for your buck with up to 11.9% APY on stablecoins, and slide your reward settings to CEL to earn up to 35% more on all your digital assets!

## HODL Rates

Download, deposit, and start earning!

June 19 - 26, 2020 \*Earn in Kind \*Earn in CEL

**BTC** 4.03%  
6.20%

**ETH** 3.82%  
6.20%

**CEL** 5.12%

STABLE COINS				ALT COINS			
USDT	8.69%	11.90%		DASH	6.18%	8.43%	
GUSD	8.69%	11.90%		ETC	6.11%	8.33%	
USDC	8.69%	11.90%		EOS	4.45%	6.06%	
TUSD	8.69%	11.90%		LTC	4.13%	5.62%	
TAUD	8.69%	11.90%		BCH	3.82%	5.19%	
TCAD	8.69%	11.90%		XRP	3.61%	4.91%	
THKD	8.69%	11.90%		OMG	3.11%	4.22%	
TGBP	8.69%	11.90%		XLM	3.10%	4.20%	
PAX	8.69%	11.90%		ZRX	2.89%	3.92%	
MCDAI	8.69%	11.90%					
SGA	8.69%	11.90%					
				GOLD			
				XAUT	3.04%	4.13%	

**Download the App**

All rates are annualized and are subject to change.  
Interest of assets may be subject to legal restrictions.  
Not available in all countries.  
www.celsius.network | hello@celsius.network

## 5. Rewards email

Celsius <app@celsius.network>  
to me

Mon, Apr 4, 6:59 AM

## Rewards Received!

Your weekly rewards have been added to your account.  
This week you **earned**:

**\$220.94**

[View Your Rewards](#)

If you have any questions, please connect with Customer Care at 1-866-HODL-NOW (1-866-463-5669) or use the Customer Care web form.

If you **earned** in CEL tokens you could have **earned** \$30 more.  
Check out our [weekly rates](#) to see how to **earn** more in CEL on your holdings.



## Exhibit B

B. Taxes 2020 - Form 1099 received from Celsius for assets deposited with Celsius.

☐ CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. <b>CELSIUS NETWORK LIMITED</b> <b>35 GREAT ST HELEN'S</b> <b>LONDON</b> <b>UNITED KINGDOM</b>		1 Rents 2 Royalties 3 Other income <b>\$731.79</b>	OMB No. 1545-0115  <b>2020</b>  Form 1099-MISC	<b>Miscellaneous Income</b>
PAYER'S TIN <b>98-1528554</b>	RECIPIENT'S TIN [REDACTED]	5 Fishing boat proceeds 7 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/> 9 Crop insurance proceeds 11 13 Excess golden parachute payments 15 State tax withheld	4 Federal income tax withheld 6 Medical and health care payments 8 Substitute payments in lieu of dividends or interest 10 Gross proceeds paid to an attorney 12 Section 409A deferrals 14 Nonqualified deferred compensation 16 State/Payer's state no. <b>CA</b>	<b>Copy B For Recipient</b> This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
RECIPIENT'S name, street address (including apt. no.), city or town, state or province, country, and ZIP or foreign postal code <b>CONNIE KWAN</b> <b>REDWOOD CITY, CA 94062</b>		Account number (see instructions) <b>ORSN0KADQVRVA1N1VEIQ</b>		
FATCA filing requirement <input type="checkbox"/>		Form 1099-MISC (keep for your records) www.irs.gov/Form1099MISC Department of the Treasury - Internal Revenue Service		

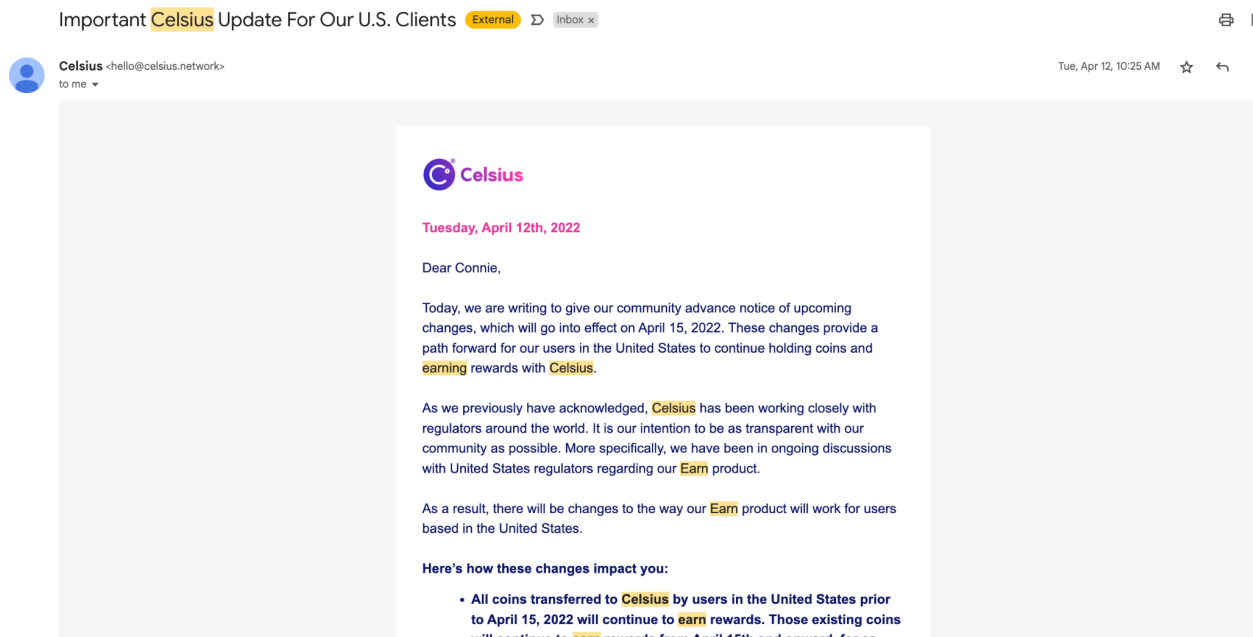
☐ CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. <b>CELSIUS NETWORK LLC</b> <b>221 RIVER STREET</b> <b>9TH FLOOR</b> <b>HOBOKEN, NJ 07030</b>		1 Rents 2 Royalties 3 Other income <b>\$7,028.23</b>	OMB No. 1545-0115  <b>2021</b>  Form 1099-MISC	<b>Miscellaneous Information</b>
PAYER'S TIN <b>87-1192148</b>	RECIPIENT'S TIN [REDACTED]	5 Fishing boat proceeds 7 Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale <input type="checkbox"/> 9 Crop insurance proceeds 11 Fish purchased for resale 13 Excess golden parachute payments 15 State tax withheld	4 Federal income tax withheld 6 Medical and health care payments 8 Substitute payments in lieu of dividends or interest 10 Gross proceeds paid to an attorney 12 Section 409A deferrals 14 Nonqualified deferred compensation 16 State/Payer's state no. <b>CA</b>	<b>Copy B For Recipient</b> This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
RECIPIENT'S name, street address (including apt. no.), city or town, state or province, country, and ZIP or foreign postal code <b>CONNIE KWAN</b> <b>[REDACTED] CITY, CA [REDACTED]</b>		Account number (see instructions) <b>ORSN0KADQVRVA1N1VEIQ</b>		
FATCA filing requirement <input type="checkbox"/>		Form 1099-MISC (keep for your records) www.irs.gov/Form1099MISC Department of the Treasury - Internal Revenue Service		

## Exhibit B

a) Celsius emails regarding “Important Celsius Update For Our U.S. Clients” My assets are to remain in Earn if I do not take action. The email fails to mention (obfuscates) the added risk for Earn account holders over Custody or any such clauses in the new ‘Terms of Use’.

Note that there is no mention of the ‘Cease and Desist’ orders from certain states. Instead the email implies that Celsius is working closely with regulators around the works and the changes to the Earn account are being made in consultation with the regulators.



Here's how these changes impact you:

- All coins transferred to Celsius by users in the United States prior to April 15, 2022 will continue to earn rewards. Those existing coins will continue to earn rewards from April 15th and onward, for as long as they remain in their Earn accounts.
- On April 15, 2022, Celsius will be launching a new Custody solution for users in the United States. Your Custody account will serve as the centerpiece of your home for crypto, providing a secure way to navigate across Celsius' products, including store, access, borrow, spend, earn and grow.
- New transfers made by non-accredited investors in the United States will be held in their new Custody accounts and will not earn rewards. Non-accredited investors can continue to swap, borrow, and transfer within their Custody accounts based on their local jurisdiction.
- All coins posted as collateral against a loan that is opened prior to April 15, 2022, will be returned to their Earn accounts when the loan is repaid. Those coins will resume earning rewards for as long as they remain in their Earn accounts.
- Verified accredited investors in the United States will be able to add new coins into their Earn accounts to earn rewards. For additional information on how to become an accredited investor, contact us at <https://celsius.network/customer-care> or [read more](#).
- Users located outside of the United States will be unaffected by these changes. They will continue to have access to all of the products and services available to them prior to these changes.
- Watch our [Custody tutorial video](#) to learn more.

Celsius will never stop advocating for financial freedom and we thank our community for their ongoing support. We will continue to provide updates as we engage with regulators and ensure the delivery of our services to our users globally.

If you have questions or require additional assistance, contact us at 1-866-HODL-NOW (1-866-463-5669). Our Customer Care Center is available Monday - Saturday, from 10AM - 11PM EST or contact us at <https://celsius.network/customer-care>

Sincerely,  
The Celsius Team

